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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1942

No. 238

THELMA MARTIN,

Appellant,

against

CITY OF STRUTHERS, OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION, *Amicus Curiae*

IN OPPOSITION TO THE JUDGMENT AND DECISION OF THE SUPREME COURT OF OHIO HEREWITH APPEALED FROM

DOROTHY KENYON,
On Behalf of
American Civil Liberties Union,
Amicus Curiae.

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SUPREME COURT OF THE UNITED STATES

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Motion for Leave to File Brief as *Amicus Curiae*

May it Please the Court:

The undersigned, as counsel for the American Civil Liberties Union respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for the appellant to the filing of this brief has been obtained. Attorney for the appellee has failed and refuses to grant his consent.

Special reasons in support of this motion are set out in the accompanying brief.

March 10, 1943.

DOROTHY KENYON,
On Behalf of
American Civil Liberties Union,
Amicus Curiae.

SUPREME COURT OF THE UNITED STATES

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Preliminary Statement

The American Civil Liberties Union herewith files its brief *amicus curiae* upon the hearing of the above entitled appeal in opposition to the judgment and decision of the Supreme Court of the State of Ohio herewith appealed from.

The American Civil Liberties Union, a non-partisan, non-sectarian organization, with a membership of thousands of persons in all the states of the Union, including Ohio, has for the last twenty years or more endeavored to carry out its objects as stated in its charter, namely, "to maintain throughout the United States and its possessions the rights of free speech, free press, free assemblage

and other civil rights and to take all legitimate action in furtherance of such purposes". In pursuance of these objects it has fought invasions of civil liberties wherever it has found them, has defended in the courts those whose civil rights it believed to be invaded and has appeared as *amicus curiae* in hundreds of cases involving issues of civil liberties.

In the opinion of the American Civil Liberties Union the preservation of the rights of free speech and free press requires that there should be no prohibition or limitation prohibitive in effect upon the distribution of ideas, whether by sales or by free distribution of printed matter and whether in public places or from house to house. Personal house to house distribution of pamphlets, leaflets, handbills and other papers is as essentially an exercise of the right of freedom of the press and of expression generally as is the publication and distribution of newspapers and periodicals, whether through the mails or over the newsstands, and as is the dissemination of ideas by word of mouth, by personal conversations, at meetings or over the radio. Unrestricted personal distribution of this nature serves a vital democratic need. Not all of us who have thoughts and ideas which we desire to express to others, whether to a large or small audience, can broadcast them over the radio or on the pages of the great dailies. What is available to most of us is personal contact with our neighbors and fellows.

Pamphlets have played a glorious role in the history of the development of ideas. The competition of ideas in the market-place is seen at its best in pamphleteering. One of the greatest roles in the early struggles of this country against despotism, in the establishment of this nation and in the formation of our democratic form of

government, was played by persons now known as the "Pamphleteers". Tom Paine, Thomas Jefferson, Samuel Adams, Alexander Hamilton, James Madison, John Jay, and others whose name is legion, wrote the philosophy and provided the ideology underlying the Declaration of Independence, our war for freedom, the Constitution of the United States and the Bill of Rights itself. Pamphlets, handbills, leaflets, without these it is hard to visualize how we could ever have attained that unity in freedom which we all prize and love so well.

This precious right, the right to pamphleteer, must never be destroyed.

It is because of our devotion to this principle of freedom that we file this brief today. None of the governing body of the Union are members of Jehovah's Witnesses nor do they share the religious convictions of that group.

Statement of Facts

This appeal is from a judgment and decision of the Supreme Court of Ohio rendered and entered on February 4, 1942, confirming a judgment of conviction by the Mayor's Court of the City of Struthers, Ohio, for an alleged violation by appellant of an Ordinance of said City.

The Ordinance, known as *Section 41 of Chapter 21 of Ordinances of the City of Struthers,* reads as follows:

> "It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them are distributed."

Violation of the Ordinance is punishable by fine.

The facts themselves are simple and undisputed. Appellant, a member of a religious group known as Jehovah's Witnesses, knocked on the door of a home in the City of Struthers, asked the young son of the household who came to the door in response to her knock for his mother, offered booklets to the mother when she appeared at the door, and then, after asking her aid in securing the release of certain others of Jehovah's Witnesses, including five children, who had been previously arrested by the City authorities, handed her a leaflet advertising a meeting of the group to be held on a succeeding Sunday afternoon in Columbus, Ohio. The lady of the house refused the booklets remarking that she was not interested; she took the leaflet, however, and glanced over it after which she tore it up and threw it away. Appellant then left the premises and was immediately arrested by a police officer who drew up in his car at the gate just as she was going out. The entire conversation between appellant and the householder was amicable, orderly and without incident. For this appellant was convicted under the Ordinance and fined.

I.

The City Ordinance in question is repugnant to the Fourteenth Amendment to the Constitution of the United States and is unconstitutional and void because in violation of freedom of speech, press and religion and of due process of law as therein guaranteed.

A.

The Ordinance as applied to the facts of this case violates the constitutional rights of freedom of speech, press and religion.

It is well-settled law that freedom of speech, press and

the Fourteenth Amendment to the Constitution of the United States. (*Meyer* v. *Nebraska*, 262 U. S. 390; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Hamilton* v. *Regents of University of California*, 293 U. S. 245; *Cantwell* v. *Connecticut*, 310 U. S. 296.) Municipal ordinances are also included "within the prohibition of the amendment". (*Lovell* v. *Griffin*, 303 U. S. 444.)

It is equally well-settled law that freedom of the press includes not only publication but distribution as well. (*Lovell* v. *Griffin*, *supra*.)

Distribution of pamphlets at the homes of the people is one of the most effective ways of calling attention to them.

> "Pamphlets have proved most effective instruments in dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people". (*Schneider* v. *Irvington*, 308 U. S. 147)

> "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place". (*Schneider* v. *Irvington*, 308 U. S. 147)

Applying these principles to the ordinance in question it is respectfully submitted that a regulation which attempts, as does the ordinance in question, to impose a flat prohibition upon manual distribution of pamphlets at people's homes (particularly where no money is asked and the pamphlets are wholly non-commercial in character) is of necessity violative of the Fourteenth Amendment to the Constitution.

It is true that several ordinances dealing with the field of home distribution have recently been upheld. Each one has been justified on the ground that it deals with

only a few of the many possible contacts between people in their homes and the individuals who seek to communicate with them, that other channels of communication with people in their homes remain open and that the bar therefore is not absolute.

Thus *San Francisco News Co.* v. *City of South San Francisco* (69 Fed. 2nd 879), an ordinance forbidding throwaways of handbills in automobiles, yards, porches or mailboxes was held valid by the Federal Circuit Court of Appeals in part at least because of the fact that the prohibition was not absolute since it did not "forbid the manual delivery of the publication by the carrier to a member of the household". (See also in this connection *Bohnke* v. *People,* No. 1005 Oct. T. 1941, certiorari denied, 316 U. S. 667; rehearing denied, 316 U. S. 713, where the ordinance in question forbade entry upon private property for the purpose of distributing handbills except with prior consent.) Following the line of reasoning of the *San Francisco News Co.* case the ordinance in the case at bar might conceivably be upheld upon the ground that, while it manifestly *does* forbid manual delivery to a person summoned to the door of his home for the purpose, it nevertheless just as manifestly does *not* prohibit throwaways without doorbell summonses. Thus what one ordinance permits the other forbids and each in its field may conceivably be constitutional.

Another type of ordinance recently upheld by this court (*Jones* v. *Opelika,* 316 U. S. 584, rehearing granted 87 Law Ed. 515 (Adv. Sheets)) constitutes still another whittling away of this essential constitutional right of freedom of communication with persons in their homes in a democracy. By requiring the taking out of a license before pamphlets can be distributed, either at people's homes or in the street, still another barrier has been interposed to freedom of communication.

The sum total of all such ordinances is a constantly narrowing field of communication. Thus it is forbidden now in certain states to distribute handbills at people's homes without prior consent (the *Bohnke* case), to throw handbills on their lawns or put them in their automobiles (the *San Francisco News Co.* case), to ring doorbells and offer handbills to them (the case at bar), or to do all this without a license (the *Jones* v. *Opelika* case). The effect of all these ordinances is cumulative. For as one means of communication is closed and another one is resorted to that too is likely to become unpopular and to fall under the ban. Thus rights get whittled away bit by bit until the valuable substance is all but gone. The whole thing is a slow process of attrition, the wearing away of essential rights. The question arises, at what points will the line be drawn and which of these varying types of ordinance will be found constitutional, since obviously not all can be so found without closing all feasible channels of communication.

This particular ordinance is perhaps not in itself of great importance or significance. But it is like one of those drops of water which over the ages have driven a fissure and then a deep canyon between two parts of what was once a broad and indivisible plain. Communication is as effectively severed by a multitude of drops of this sort as by an earthquake.

Nor should we minimize the extent of the injury done in this case. In *People* v. *Barber* (289 N. Y. 378), a licensing ordinance case similar on its facts to the *Jones* v. *Opelika* case (*supra*), the court, in reversing the conviction obtained in the lower court, concluded by quoting from the brief filed as *amicus* by the Committee on Civil Rights of the New York State Bar Association, the Com-

mittee on the Bill of Rights of the Association of the Bar of the City of New York and the Committee on Civil Rights of the New York County Lawyers Association, as follows:

> "It may seem to some that appellant's activities were of such a character that, at this critical period in world history, the Courts and the Bar need not be particularly concerned with their repression. But, if appellant's activities involved the exercise by him of fundamental rights guaranteed by the Federal and State Constitutions, the violation of those rights cannot be disregarded as of trivial consequence. Each case of denial of rights to an individual or to a small minority may seem to be relatively unimportant, but we know now, more surely than ever before, that callousness to the rights of individuals and minorities leads to barbarism and the destruction of the essential values of civilized life".

The need of keeping channels of communication open, especially for obscure and unpopular minority groups, becomes more rather than less important as time goes by. The rich and powerful have many channels of communication denied to those less favorably situated. Neighbor to neighbor grass roots contacts are essential if democracy is to survive. And these must be two-way contacts, that is to say, there must be an opportunity to listen as well as to speak, to read as well as to write. Insofar as this ordinance and others like it set up barriers to these contacts they stifle freedom of communication and prevent the free dissemination of ideas.

It is submitted, therefore, that this ordinance as interpreted by the Supreme Court of the State of Ohio as applicable to the facts of this case is unconstitutional be-

cause in violation of the constitutional guarantees of free speech, free press and freedom of religion.

B.

The ordinance is an unwarranted and unreasonable exercise of the police power, being prohibitory and not regulatory in nature, and not being justified by any existing danger or emergency, and it is therefore in its application to pamphlet distributors unconstitutional and void.

The ordinance does not attempt to regulate door to door manual distribution in any way. On its face it is a flat prohibition of any door to door manual distribution of pamphlets whatever. No exceptions are granted. The rule is absolute. Anyone who knocks and delivers is thereby made a criminal. This is not that "free and unhampered distribution of pamphlets" which the Supreme Court (in *Lovell* v. *Griffin, supra*) has declared essential to the maintenance of constitutional rights. Rather "it imposes what amounts to a virtual prohibition upon such distribution" (*Zimmerman* v. *Village of London, Ohio,* 38 Fed. Supp. 582). This is clearly arbitrary and unreasonable.

Nor does the prohibition appear justified by any existing danger or emergency. Whatever the reasons for the ordinance, whether to guard against thieves, secure privacy, avoid annoyance, littering or fire-hazards, none of these possible reasons appears compelling enough to justify suppression of free speech. As Justice Brandeis has said (*Whitney* v. *California,* 274 U. S. 357):

> "To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger

apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. * * * Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom."

See also:

Bridges v. *California,* 314 U. S. 252.

SUMMARY

The ordinance, therefore, insofar as it be deemed applicable to door to door manual distribution of non-commercial pamphlets, is justified by no danger or emergency sufficiency great or imminent to require such curtailment of the rights of free speech and press, it is therefore wholly unreasonable and, since it has the inevitable effect of seriously interfering with the speech, press and religious activities and practices of Jehovah's Witnesses and other pamphleteers, it constitutes a serious abridgment of the constitutional rights of freedom of speech, press and religion.

CONCLUSION

It is therefore respectfully submitted that the judgment of the Court below should be reversed.

Respectfully submitted,

Dorothy Kenyon,
On Behalf of
American Civil Liberties Union
Amicus Curiae.

Dated March 9, 1943.

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SUPREME COURT OF THE UNITED STATES.

No. 238.—October Term, 1942.

Thelma Martin, Appellant, *vs.* City of Struthers, Ohio.	On Appeal from the Supreme Court of the State of Ohio.

[May 3, 1943.]

Mr. Justice Black delivered the opinion of the Court.

For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community. In the instant case, the City of Struthers, Ohio, has attempted to make this decision for all its inhabitants. The question to be decided is whether the City, consistently with the federal Constitution's guarantee of free speech and press, possesses this power.[1]

The appellant, espousing a religious cause in which she was interested—that of the Jehovah's Witnesses—went to the homes of strangers, knocking on doors and ringing doorbells in order to distribute to the inmates of the homes leaflets advertising a religious meeting. In doing so, she proceeded in a conventional and orderly fashion. For delivering a leaflet to the inmate of a home she was convicted in the Mayor's Court and was fined $10.00 on a charge of violating the following City ordinance:

"It is unlawful for any person distributing handbills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such handbills, circulars or other advertisements they or any person with them may be distributing."

[1] This ordinance was not directed solely at commercial advertising. Cf. Valentine v. Chrestensen, 316 U. S. 52; Town of Green River v. Fuller Brush Co., 65 F. 2d 112. Compare for possible different results under state constitutions Prior v. White, 132 Fla. 1; Orangeburg v. Farmer, 181 S. C. 143.

The appellant admitted knocking at the door for the purpose of delivering the invitation, but seasonably urged in the lower Ohio state court that the ordinance as construed and applied was beyond the power of the State because in violation of the right of freedom of press and religion as guaranteed by the First and Fourteenth Amendments.[2]

The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance.[3] This freedom embraces the right to distribute literature, *Lovell* v. *Griffin*, 303 U. S. 444, 452, and necessarily protects the right to receive it. The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. *Schneider* v. *State*, 308 U. S. 147, 162. Yet the peace, good order, and comfort of the community may imperatively require regulation of the time, place, and manner of distribution. *Cantwell* v. *Connecticut*, 310 U. S. 296, 304. No one supposes, for example, that a city need permit a man with a communicable disease to distribute leaflets on the street or to homes, or that the First Amendment prohibits a state from preventing the distribution of leaflets in a church against the will of the church authorities.

We are faced in the instant case with the necessity of weighing the conflicting interests of the appellant in the civil rights she claims, as well as the right of the individual householder to determine whether he is willing to receive her message, against the interest of the community which by this ordinance offers to protect the interests of all of its citizens, whether particular citizens want that protection or not. The ordinance does not control anything but the distribution of literature, and in that respect it substitutes

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[2] The appellant's judgment of conviction was appealed to the Supreme Court of Ohio which dismissed the appeal on the stated ground that: "No debatable constitutional question is involved." We at first dismissed the appeal, thinking that the Supreme Court of Ohio meant that no constitutional question had been properly raised in accordance with Ohio procedure. Upon reconsideration we concluded that since a constitutional question had been presented in the lower State court, the language of the Order of the Supreme Court of Ohio should be construed as a decision upon the constitutional question.

[3] "The only security of all is in a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure." Jefferson to Lafayette, Writings of Thomas Jefferson, Washington ed., v. 7, p. 325.

the judgment of the community for the judgment of the individual householder. It submits the distributer to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is in fact glad to receive it. In considering legislation which thus limits the dissemination of knowledge, we must "be astute to examine the effect of the challenged legislation" and must "weigh the circumstances and . . . appraise the substantiality of the reasons advanced in support of the regulation." *Schneider* v. *State, supra,* 161.

Ordinances of the sort now before us may be aimed at the protection of the householders from annoyance, including intrusion upon the hours of rest, and at the prevention of crime. Constant callers, whether selling pots or distributing leaflets, may lessen the peaceful enjoyment of a home as much as a neighborhood glue factory or railroad yard which zoning ordinances may prohibit. In the instant case, for example, it is clear from the record that the householder to whom the appellant gave the leaflet which led to her arrest was more irritated than pleased with her visitor. The City, which is an industrial community most of whose residents are engaged in the iron and steel industry,[4] has vigorously argued that its inhabitants frequently work on swing shifts, working nights and sleeping days so that casual bell pushers might seriously interfere with the hours of sleep although they call at high noon. In addition, burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later.[5] Crime prevention may thus be the purpose of regulatory ordinances.

While door to door distributers of literature may be either a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion. The widespread use of this method of communication by many groups es-

[4] 16th Census, "Population—2d Series—Ohio", 133, 151.

[5] For a discussion of such practices see Soderman and O'Connell, Modern Criminal Investigation, chap. 13 and chap. 20; Federal Bureau of Investigation Law Enforcement Bulletin, July, 1938; 20 Public Management 83 (an analysis of the criminal records of a group of canvassers in Winnetka, Illinois). Sacramento, California, has rested a canvassing ordinance on crime prevention. In re Hartman, 25 C. A. 2d 55, and courts have been aware of this aspect of the problem in dealing with such ordinances. Allen v. McGovern, 12 N. J. Misc. 12, 13; Dziatkiewicz v. Maplewood, 115 N. J. L. 37.

pousing various causes attests its major importance. "Pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people." *Schneider* v. *State, supra,* 164. Many of our most widely established religious organizations have used this method of disseminating their doctrines,[6] and laboring groups have used it in recruiting their members.[7] The federal government, in its current war bond selling campaign, encourages groups of citizens to distribute advertisements and circulars from house to house.[8] Of, course, as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the citizens in their homes.[9] Door to door distribution of circulars is essential to the poorly financed causes of little people.

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[6] Representatives of the American Tract Society, an interdenominational organization engaged in colportage since 1841, have visited over twenty-five million families. Article on "American Tract Society", 1 Encyclopedia Americana (1932 ed.) 566; Annual Reports of the American Tract Society (e. g. the 116th Report, 1941, 37-38; 117th Report, 1942, pp. 37-38); Baird, Religion in America (1856), 334-340.

See also the activities of the American Bible Society. Jones, Colportage Sketches (1883); Dwight, The Centennial History of the American Bible Society (1916), 177-81, 293-95, 460; Annual Reports of the American Bible Society (e. g., 126th Report, 1942, *passim.*).

For the world-wide colportage activities of the British and Foreign Bible Society, see the Society's 137th Report, 1941, *passim;* For Wayfaring Men, (1939), 31-78; Ritson, The World Is our Parish (1939), 116-18.

This practice has been followed by many religious groups. See, e. g., Barnes, Barnes and Stephenson, Pioneers of Light (1924), 81-104; Stevens, The First Hundred Years of the American Baptist Publication Society (1925), 30-32. During the fiscal year 1939-1940, representatives of the American Baptist Publication Society visited 52,832 families. More than six million families have been visited over a one hundred year period. Annual of Northern Baptist Convention, 1940, 671, 673; Year Book of the Northern Baptist Convention, 1942, 332-335. See for the practice of other religions, Stewart, Sheldon Jackson (1908), 32; Goodykoontz, Home Missions on the American Frontier (1939), 120-122; Keller, The Second Great Awakening in Connecticut (1942), 117-121.

[7] Lorwin and Flexner, The American Federation of Labor, 352; International Ladies Garment Workers Union, Handbook of Trade Union Methods, 10; Brooks, When Labor Organizes, chap. 1 ("Organizing a Union").

[8] "Women's Handbook", pp. 22 and 63, a publication of the Women's Section of the War Savings Staff of the Department of the Treasury; The Home Front Journal, April, 1943, p. 1, a publication of the same group; "A Program of Action for Clubs", p. 3, a publication of the Department of the Treasury. Presumably a citizen of Struthers distributing to homes the pamphlets recommended in "A Program of Action" would violate the City's ordinance.

[9] Merriam and Gosnell, The American Party System, 317 (The Canvass); Bruce, American Parties and Politics, 407; Ostogoskii, Democracy, 153-155,

Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas.

Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at least twenty states,[10] while similar statutes of narrower scope are on the books of at least twelve states more.[11] We know of no state which, as does the Struthers ordinance in effect, makes a person a criminal trespasser if he enters the property of another for an innocent purpose without an explicit command from the owners

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453; Pierson, In the Brush, 142 (politics in the old Southwest); Barnes, The Antislavery Impulse, 137-143 (circulation of antislavery petitions). The American Politician, ed. by J. T. Salter, 19, 235, 310, 339, and The American Political Scene, ed. by Edward Logan, 64, 150, indicate by passing references to practices in many states the extent to which the door to door canvass is a staple of political life.

For encouragement of this practice see Handbook of Club Organization, National Federation of Women's Republican Clubs (1942) 21; and Precinct Organization in War Time, a recent publication of the Democratic National Committee.

[10] Alabama Code (1940), Tit. 14, § 426; Connecticut Gen. Stat. (1930), § 6119; Florida Stat. (1941), § 821.01; Georgia Code Ann. (1938), § 26-3002; Illinois Ann. Stat. (Smith Hurd, 1935), Ch. 38, § 565; Indiana Stat. (Burns, 1934), § 10-4506; Maryland Ann. Code (Flack, 1939), Art. 27, §§ 24, 286; Massachusetts Ann. Laws (1933), v. 9, Ch. 266, § 120; Mississippi Code Ann. (1930), § 1168; Nebraska Comp. Stat. (1929), §§ 76-807,8; Nevada Comp. Laws (1929), § 10447; North Carolina Code (1943), § 14-134; Ohio Code Ann. (Throckmorton, 1940), § 12522; Oklahoma Stat. (1937), Tit. 21, § 1835; Oregon Comp. Laws Ann. (1940), §§ 23-593,4; Pennsylvania Ann. Stat. (Purdon, 1942 Supp.), v. 18, § 4954; South Carolina Code (1942), § 1190; Virginia Code (1936), § 4480a; Washington Rev. Stat. (Remington, 1932), § 2665; Wyoming Rev. Stat. (1931), § 32-337.

[11] Arkansas Stat. (Pope, 1937), § 3181; California Penal Code (Deering, 1941), §§ 602, 627; Colorado Stat. Ann. (1935), v. 3, Ch. 73, § 118; Kentucky Rev. Stat. (Baldwin, 1942), §§ 433.720, 433.490; Louisiana Gen. Stat. (Dart, 1939), § 9463; Maine Rev. Stat. (1930), Ch. 139, § 22; Minnesota Stat. (1941), § 621.57; Montana Rev. Code Ann. (1935) § 11482; New Hampshire Public Laws (1926), Ch. 380, § 11; New Jersey Rev. Stat. (1937), Tit. 4, § 17-2; New York Consol. Laws Ann. (McKinney, 1941), Conservation Law, §§ 361-364; Texas Stat. (Vernon, 1936), P. C. Art. 1377.

to stay away.[12] The National Institute of Municipal Law Officers has proposed a form of regulation to its member cities[13] which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed. This or any similar regulation leaves the decision as to whether distributers of literature may lawfully call at a home where it belongs—with the homeowner himself. A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers.[14] In any case, the problem must be worked out by each community for itself with due respect for the constitutional rights of those desiring to distribute literature and those desiring to receive it, as well as those who choose to exclude such distributers from the home.

The Struthers ordinance does not safeguard these constitutional rights. For this reason, and wholly aside from any other possible defects, on which we do not pass but which are suggested in other opinions filed in this case, we conclude that the ordinance is invalid because in conflict with the freedom of speech and press.

The judgment below is reversed for further proceedings not inconsistent with this opinion.

Reversed.

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12 Municipalities have occasionally made canvassers trespassers without requiring that the householder give an explicit notice, as the instant ordinance testifies. See e. g. People *v.* Bohnke, 287 N. Y. 154.

13 Municipalities and the Law in Action (1943), National Institute of Municipal Law Officers, 373. We do not, by this reference, mean to express any opinion on the wisdom or validity of the particular proposals of the Institute.

14 "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury. Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." Cantwell *v.* Connecticut, 310 U. S. 296, 306.

Mr. Justice MURPHY, concurring.

I join in the opinion of the Court, but the importance of this and the other cases involving Jehovah's Witnesses decided today, moves me to add this brief statement.

I believe that nothing enjoys a higher estate in our society than the right given by the First and Fourteenth Amendments freely to practice and proclaim one's religious convictions. Cf. *Jones* v. *Opelika,* 316 U. S. 584 at 621. The right extends to the aggressive and disputatious as well as to the meek and acquiescent. The lesson of experience is that—with the passage of time and the interchange of ideas—organizations, once turbulent, perfervid and intolerant in their origin, mellow into tolerance and acceptance by the community, or else sink into oblivion. Religious differences are often sharp and pleaders at times resort "to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." *Cantwell* v. *Connecticut,* 310 U. S. 296, 310. If a religious belief has substance, it can survive criticism, heated and abusive though it may be, with the aid of truth and reason alone. By the same method those who follow false prophets are exposed. Repression has no place in this country. It is our proud achievement to have demonstrated that unity and strength are best accomplished, not by enforced orthodoxy of views, but by diversity of opinion through the fullest possible measure of freedom of conscience and thought.

Also, few, if any, believe more strongly in the maxim, "a man's home is his castle", than I. Cf. *Goldman* v. *United States,* 316 U. S. 129 at 136. If this principle approaches a collision with religious freedom, there should be an accommodation, if at all possible, which gives appropriate recognition to both. That is, if regulation should be necessary to protect the safety and privacy of the home, an effort should be made at the same time to preserve the substance of religious freedom.

There can be no question but that appellant was engaged in a religious activity when she was going from house to house in the City of Struthers distributing circulars advertising a meeting of those of her belief. Distribution of such circulars on the streets cannot be prohibited. *Jamison* v. *Texas,* No. 588 this Term. Nor

can their distribution on the streets or from house to house be conditioned upon obtaining a license which is subject to the uncontrolled discretion of municipal officials, *Lovell* v. *Griffin,* 303 U. S. 444; *Schneider* v. *State,* 308 U. S. 147; *Largent* v. *Texas,* No. 559 this Term, or upon payment of a license tax for the privilege of so doing. *Murdock* v. *Pennsylvania,* Nos. 480-487 this Term; *Jones* v. *Opelika,* — U. S. —, Nos. 280, 314 and 966, 1941 Term, decided today. Preaching from house to house is an age-old method of proselyting, and it must be remembered that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider* v. *State, supra,* p. 163.

No doubt there may be relevant considerations which justify considerable regulation of door to door canvassing even for religious purposes,—regulation as to time, number and identification of canvassers, etc., which will protect the privacy and safety of the home and yet preserve the substance of religious freedom. And, if a householder does not desire visits from religious canvassers, he can make his wishes known in a suitable fashion. The fact that some regulation may be permissible, however, does not mean that the First Amendment may be abrogated. We are not dealing here with a statute "narrowly drawn to cover the precise situation" that calls for remedial action, *Thornhill* v. *Alabama,* 310 U. S. 88, 105; *Cantwell* v. *Connecticut, supra,* at 311. As construed by the state courts and applied to the case at bar, the Struthers ordinance prohibits door to door canvassing of any kind, no matter what its character and purpose may be, if attended by the distribution of written or printed matter in the form of a circular or pamphlet. I do not believe that this outright prohibition is warranted. As I understand it, the distribution of circulars and pamphlets is a relatively minor aspect of the problem. The primary concern is with the act of canvassing as a source of inconvenience and annoyance to householders. But if the city can prohibit canvassing for the purpose of distributing religious pamphlets, it can also outlaw the door to door solicitations of religious charities, or the activities of the holy mendicant who begs alms from house to house to serve the material wants of his fellowmen and thus obtain spiritual comfort for his own soul.

Prohibition may be more convenient to the law maker, and easier to fashion than a regulatory measure which adequately protects the peace and privacy of the home without suppressing legitimate religious activities. But that does not justify a repressive enact-

ment like the one now before us. Cf. *Schneider* v. *State, supra,* p. 164. Freedom of religion has a higher dignity under the Constitution than municipal or personal convenience. In these days free men have no loftier responsibility than the preservation of that freedom. A nation dedicated to that ideal will not suffer but will prosper in its observance.

Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE join in this opinion.

Mr. Justice FRANKFURTER.

From generation to generation fresh vindication is given to the prophetic wisdom of the framers of the Constitution in casting it in terms so broad that it has adaptable vitality for the drastic changes in our society which they knew to be inevitable, even though they could not foresee them. Thus it has come to be that the transforming consequences resulting from the pervasive industrialization of life find the Commerce Clause appropriate, for instance, for national regulation of an aircraft flight wholly within a single state. Such exertion of power by the national government over what might seem a purely local transaction would, as a matter of abstract law, have been as unimaginable to Marshall as to Jefferson precisely because neither could have foreseen the present conquest of the air by man. But law, whether derived from acts of Congress or the Constitution, is not an abstraction. The Constitution cannot be applied in disregard of the external circumstances in which men live and move and have their being. Therefore neither the First nor the Fourteenth Amendment is to be treated by judges as though it were a mathematical abstraction, an absolute having no relation to the lives of men.

The habits and security of life in sparsely settled rural communities, or even in those few cities which a hundred and fifty years ago had a population of a few thousand, cannot be made the basis of judgment for determining the area of allowable self-protection by present-day industrial communities. The lack of privacy and the hazards to peace of mind and body caused by people living not in individual houses but crowded together in large human beehives, as they so widely do, are facts of modern living which cannot be ignored.

Concededly, the Due Process Clause of the Fourteenth Amendment did not abrogate the power of the states to recognize that homes are sanctuaries from intrusions upon privacy and of opportunities for leading lives in health and safety. Door-knocking and bell-ringing by professed peddlers of things or ideas may therefore be confined within specified hours and otherwise circumscribed so as not to sanctify the rights of these peddlers in disregard of the rights of those within doors. Acknowledgement is also made that the City of Struthers, the particular ordinance of which presents the immediate issue before us, is one of those industrial communities the residents of which have a working day consisting of twenty-four hours, so that for some portions of the city's inhabitants opportunities for sleep and refreshment require during day as well as night whatever peace and quiet is obtainable in a modern industrial town. It is further recognized that the modern multiple residences give opportunities for pseudo-canvassers to ply evil trades—dangers to the community pursued by the few but far-reaching in their success and in the fears they arouse.

The Court's opinion apparently recognizes these factors as legitimate concerns for regulation by those whose business it is to legislate. But it finds, if I interpret correctly what is wanting in explicitness, that instead of aiming at the protection of householders from intrusion upon needed hours of rest or from those plying evil trades, whether pretending the sale of pots and pans or the distribution of leaflets, the ordinance before us merely penalizes the distribution of "literature." To be sure, the prohibition of this ordinance is within a small circle. But it is not our business to require legislatures to extend the area of prohibition or regulation beyond the demands of revealed abuses. And the greatest leeway must be given to the legislative judgment of what those demands are. The right to legislate implies the right to classify. We should not, however unwittingly, slip into the judgment seat of legislatures. I myself cannot say that those in whose keeping is the peace of the City of Struthers and the right of privacy of its home dwellers were not justified, in circumstances of which they may have knowledge and I certainly have not, to single out this class of canvassers as the particular source of mischief. The Court's opinion leaves one in doubt whether prohibition of all bell-ringing and door-knocking would be deemed an infringement of the constitutional protection of speech. It

would be fantastic to suggest that a city has power, in the circumstances of modern urban life, to forbid house-to-house canvassing generally, but that the Constitution prohibits the inclusion in such prohibition of door-to-door vending of phylacteries or rosaries or of any printed matter. If the scope of the Court's opinion, apart from some of its general observations, is that this ordinance is an invidious discrimination against distributors of what is politely called literature, and therefore is deemed an unjustifiable prohibition of freedom of utterance, the decision leaves untouched what are in my view controlling constitutional principles, if I am correct in my understanding of what is held, and I would not be disposed to disagree with such a construction of the ordinance.

Mr. Justice REED, dissenting.

While I appreciate the necessity of watchfulness to avoid abridgments of our freedom of expression, it is impossible for me to discover in this trivial town police regulation a violation of the First Amendment. No ideas are being suppressed. No censorship is involved. The freedom to teach or preach by word or book is unabridged, save only the right to call a householder to the door of his house to receive the summoner's message. I cannot expand this regulation to a violation of the First Amendment.

Freedom to distribute publications is obviously a part of the general freedom guaranteed the expression of ideas by the First Amendment. It is trite to say that this freedom of expression is not unlimited. Obscenity, disloyalty and provocatives do not come within its protection. *Near* v. *Minnesota,* 283 U. S. 712, 716; *Schenck* v. *United States,* 249 U. S. 47, 51; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568, 572, 574. All agree that there may be reasonable regulation of the freedom of expression. *Cantwell* v. *Connecticut,* 310 U. S. 296, 304. One cannot throw dodgers "broadcast in the streets." *Schneider* v. *State,* 308 U. S. 147, 161.

The ordinance forbids "any person distributing handbills, circulars or other advertisements to ring the doorbell, sound the door knocker, or otherwise summon the inmate or inmates . . . to the door" to receive the advertisement. The Court's opinion speaks of prohibitions against the distribution of "literature." The

precise matter distributed appears in the footnote.[1] I do not read the ordinance as prohibiting the distribution of literature nor can I appraise the dodger distributed as falling into that classification. If the ordinance, in my view, did prohibit the distribution of literature, while permitting all other canvassing, I should believe such an ordinance discriminatory. This ordinance is different. The most, it seems to me, that can be or has been read into the ordinance is a prohibition of free distribution of printed matter by summoning inmates to their doors. There are excellent reasons to support a determination of the city council that such distributors may not disturb householders while permitting salesmen and others to call them to the door. Practical experience may well convince the council that irritations arise frequently from this method of advertiseing. The classification is certainly not discriminatory.[2]

If the citizens of Struthers desire to be protected from the annoyance of being called to their doors to receive printed matter, there is to my mind no constitutional provision which forbids their municipal council from modifying the rule that anyone may sound a call for the householder to attend his door. It is the council which is entrusted by the citizens with the power to declare and abate the myriad nuisances which develop in a community. Its determination should not be set aside by this Court unless clearly and patently unconstitutional.

The antiquity and prevalence of colportage are relied on to support the Court's decision. But the practice has persisted because the householder was acquiescent. It can hardly be thought,

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1 "RELIGION as a WORLD REMEDY, The Evidence in Support Thereof. Hear JUDGE RUTHERFORD, Sunday, July 28, 4 P. M., E. S. T. FREE. All Persons of Goodwill Welcome, FREE. Columbus Coliseum, Ohio State Fair Grounds. [on one side]

"'1940's Event of Paramount Importance To YOU! What is it? The THEOCRATIC CONVENTION of JEHOVAH'S WITNESSES. Five Days—July 24-28—Thirty Cities. All Lovers of Righteousness — Welcome! The strange fate threatening all 'Christendom' makes it imperative that you COME and HEAR the public address on RELIGION AS A WORLD REMEDY, The Evidence in Support Thereof, by Judge Rutherford at the COLISEUM of the OHIO STATE FAIR GROUNDS, Columbus, Ohio, Sunday, July 28, at 4 p. m., E. S. T. 'He that hath an ear to hear' will come to one of the auditoriums of the convention cities listed below, tied in with Columbus by direct wire. Some of the 30 cities are [21 are listed]. For detailed information concerning these conventions write WATCHTOWER CONVENTION COMMITTEE, 117 Adams St., Brooklyn, N. Y.'' [one the other side]

2 Keokee Coke Co. *v.* Taylor, 234 U. S. 224; German Alliance Insurance Co. *v.* Kansas, 233 U. S. 389; Hall *v.* Geiger-Jones Co., 242 U. S. 539; Minnesota *v.* Probate Court, 309 U. S. 270; Labor Board *v.* Jones & Laughlin, 301 U. S. 1, 46; Carmichael *v.* Southern Coal Co., 301 U. S. 495, 509, 512.

however, that long indulgence of a practice which many or all citizens have welcomed or tolerated creates a constitutional right to its continuance. Changing conditions have begotten modification by law of many practices once deemed a part of the individual's liberty.

The First Amendment does not compel a pedestrian to pause on the street to listen to the argument supporting another's views of religion or politics. Once the door is opened, the visitor may not insert a foot and insist on a hearing. He certainly may not enter the home. To knock or ring, however, comes close to such invasions.[1] To prohibit such a call leaves open distribution of the notice on the street or at the home without signal to announce its deposit. Such assurance of privacy falls far short of an abridgment of freedom of the press. The ordinance seems a fair adjustment of the privilege of distributors and the rights of householders.

Mr. Justice ROBERTS and Mr. Justice JACKSON join in this dissent.

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